

LONGHORN OIL, LTD.

IBLA 82-1040

Decided April 7, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, canceling oil and gas lease. M-53274.

Affirmed.

1. Accounts: Payments--Oil and Gas Leases: Cancellation--Oil and Gas Leases: Rentals

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

APPEARANCES: Harold C. Hofer, Esq., Newport Beach, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Longhorn Oil, Ltd. (Longhorn), has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 2, 1982, canceling its simultaneous oil and gas lease, M-53274, issued May 24, 1982, as required by 43 CFR 3112.6-3, for failure to submit timely the first year's advance rental pursuant to 43 CFR 3112.4-1(a). Appellant's application was drawn with first priority for parcel MT-24 in the September 1981 simultaneous oil and gas lease drawing. The lease contained 1,280 acres, thereby requiring advance rental of \$1,280.

The rationale for the BLM decision was stated as follows:

The check submitted for payment of your first year's rental was returned by the Bank of Newport as uncollectible. The reason given for return was, "non-sufficient funds." The request for payment was received by you on April 12, 1982. The time allowed to remit proper rental has now expired, and there are no provisions for reinstating the offer or lease.

In its statement of reasons for appeal, appellant submits that its managing partner, Greg Brakovich, executed and tendered to BLM a personal check in the amount of \$1,280 drawn on the Bank of Newport as rental for oil and gas lease M-53274. Appellant further states that through no fault of its own Brakovich's account suffered a credit reversal on or about May 14, 1982, which was coincidental with the date the check was presented for payment by BLM. Appellant states that the check was returned to BLM stamped "non-sufficient funds," and that appellant had no knowledge of the foregoing until May 28, 1982, which left an insufficient amount of time to rectify the error by submitting a second check prior to the June 2, 1982, cancellation of the oil and gas lease. Counsel for appellant tendered a cashier's check in the amount of the rental with the brief on appeal. Appellant also asserts in its defense that BLM failed to present the check to the Bank of Newport for payment a second time which appellant contends it should have done.

The record discloses that on April 12, 1982, Brakovich received a notice from BLM requiring that Longhorn sign and return the enclosed lease forms and submit the first year's rental payment (\$1,280) "within 30 days from receipt of this notice." BLM received a check dated May 3, 1982, in the amount of \$1,280, payable to BLM and signed by Brakovich. The check, drawn on the Bank of Newport, was dishonored by the bank as uncollectible and returned by the drawee bank stamped, "non-sufficient funds." Appellant does not assert on appeal that the bank wrongfully dishonored the check.

[1] The applicable regulation, 43 CFR 3112.4-1(a), provides, in relevant part:

The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. * * * The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease. [Emphasis added.]

Failure to submit timely the first year's advance rental with an executed lease agreement, in accordance with 43 CFR 3112.4-1(a), properly results in rejection of the simultaneous oil and gas lease application, pursuant to 43 CFR 3112.6-1(d). Kenneth R. Lewis, 70 IBLA 112 (1983); Kathy L. Phillips, 64 IBLA 388 (1982); Theresa Jibilian, 57 IBLA 354 (1981). We have long held that no excuses for failure to submit timely the first year's advance rental will be permitted. Robert E. Bergman, 53 IBLA 122 (1981). Accordingly, where a draft submitted in payment of the first year's advance rental is dishonored and returned by the drawee, BLM must reject the offeror's application in the absence of proof of wrongful dishonor by the drawee. Jose V. Lim, 44 IBLA 96 (1979); Karen L. Brown, 31 IBLA 239 (1977). BLM has no obligation to resubmit a check which has been dishonored. See Dale A. Spiegel, 19 IBLA 235 (1975).

Similarly, where a noncompetitive oil and gas lease is issued to the successful applicant in a drawing of simultaneously-filed offers and the lessee's check in payment of the first year's rental is subsequently returned by the drawee bank as uncollectible, the lease is subject to cancellation and the tender of a substitute check after the time for payment of the rental will not alter this result. Dale A. Spiegel, supra at 238. The Secretary is obligated to issue a noncompetitive oil and gas lease only to the first-qualified applicant, 30 U.S.C. § 226(c) (1976), and the disqualification of the first-drawn applicant is automatic and the rights of the second-drawn applicant attach eo instante upon failure of the first drawee to timely pay the rental. Zenith S. Merritt, 46 IBLA 24 (1980). Although the brief on appeal implies that BLM delayed notifying appellant of the returned check, thus prejudicing its chance to rectify the error, the record discloses that the check was not returned to BLM until May 25, 1982, after the close of the 30-day period for submitting the rental.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

